

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of RULE I)	NOTICE OF PUBLIC HEARING
and amendment of ARM 37.78.102,)	ON PROPOSED ADOPTION
37.78.416, 37.78.420, 37.78.807, and)	AND AMENDMENT
37.78.832 pertaining to)	
temporary assistance for needy)	
families (TANF))	

TO: All Interested Persons

1. On July 26, 2006, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption and amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on July 17, 2006, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; e-mail dphhslegal@mt.gov.

2. The rule as proposed to be adopted provides as follows:

RULE I TANF: PARTICIPATION CRITERIA UNDER PARENTS AS SCHOLARS PROGRAM (1) Based on current federal TANF participation rates, the department will set and allow a limited number of TANF recipients to continue post-secondary education activities under the Parents as Scholars Program if:

- (a) the participant has completed an assessment/screening which includes 12 months of successful post-secondary school attendance as a TANF recipient;
- (b) the participant's course work will lead to a degree or certificate in the approved program;
- (c) the participant does not have a baccalaureate degree or a certification in a field for which a degree or certificate was previously awarded;
- (d) the participant is enrolled full time in an approved educational program in a unit of the Montana university system as provided in 20-25-201, MCA, or any other accredited college in Montana, or enrolled online with an accredited college whose credits are transferable in their entirety to an approved educational program in Montana, or is enrolled in an accredited high school or training program approved by the department by rule;
- (e) the participant is making satisfactory progress in accordance with the requirements of the institution the participant is attending;

(f) the participant has developed a comprehensive plan for the completion of the course of study and the attainment of a degree or certificate, regardless of the number of months remaining on the individual's TANF time clock;

(g) the training provides skills that will lead to gainful employment in Montana in an area where the participant lives, or the participant is willing to relocate to an area within the United States where the acquired skills will lead to gainful employment;

(h) the participant is cooperating with paternity and child support enforcement requirements; and

(i) the participant completes a 180-hour work activity requirement in a 12-month period that may include work study, internships, or paid employment.

(2) If applicants for the Parents as Scholars Program exceed the number of available openings as determined by the department, applicants will be chosen on the basis of merit determined on the basis of:

(a) proximity to graduation with a degree or certification;

(b) probability of the degree or certification leading to gainful employment in the state;

(c) academic history, including but not limited to grade point average and any history of academic probation;

(d) any sanctions history; and

(e) chronology of application.

AUTH: 53-4-209, 53-4-212, MCA

IMP: 53-4-211, 53-4-601, MCA

3. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.78.102 TANF: FEDERAL REGULATIONS ADOPTED BY REFERENCE

(1) The TANF program shall be administered in accordance with the requirements of federal law governing temporary assistance for needy families (TANF) as set forth in Title IV of the Social Security Act, 42 USC 601 et seq., as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the Balanced Budget Act of 1997.

(2) The "Montana TANF eCash aAssistance mManual" ~~in effect July 1, 2005 dated July 1, 2006~~ is adopted and incorporated by this reference. A copy of the Montana TANF eCash aAssistance mManual is available for public viewing at each local office of public assistance, and at the Department of Public Health and Human Services, Human and Community Services Division, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952. Manual updates are also available on the department's website at www.dphhs.mt.gov.

AUTH: 53-4-212, MCA

IMP: 53-4-211, 53-4-601, MCA

37.78.416 TANF: TANF CASH ASSISTANCE; EXCLUDED UNEARNED INCOME (1) remains the same.

(2) In testing gross monthly income and in determining grant amount, the

following unearned income shall be excluded:

(a) through (w) remain the same.

(x) money received pursuant to a valid loan as defined in ARM 37.78.103;

and

(y) emergency assistance payments provided under ARM 37.78.601 and 37.78.602; and

(z) interest earned on countable resources.

AUTH: 53-4-212, MCA

IMP: 53-4-211, 53-4-601, MCA

37.78.420 TANF: ASSISTANCE STANDARDS; TABLES; METHODS OF COMPUTING AMOUNT OF MONTHLY BENEFIT PAYMENT (1) Income standards as set forth in this rule are used to determine whether need exists with respect to income for any person who applies for or receives TANF cash assistance and to determine the benefit amount the assistance unit will receive if eligible. ~~Three~~ Four sets of assistance standards are used which are as follows:

(a) and (b) remain the same.

(c) The benefit standard sets the level of net countable income which cannot be exceeded if the assistance unit is to be eligible for assistance. ~~It is also used~~

(d) The payment standard is used to determine the amount of the monthly cash payment in the TANF cash assistance program and is based on the size of the assistance unit. The net countable income is subtracted from the payment standard to determine the amount of the payment for the TANF cash assistance unit. This amount is prorated for the month of application if eligibility is for less than a full month.

(2) through (3)(b) remain the same.

(4) The GMI standards, NMI standards, and benefits standards are as follows:

(a) through (c) remain the same.

(d) The payment standards are compared to the assistance unit's net countable income as defined in ARM 37.78.103.

PAYMENT STANDARDS

(33% of the FY 2005 Federal Poverty Level)

<u>1</u>	<u>\$263</u>
<u>2</u>	<u>353</u>
<u>3</u>	<u>442</u>
<u>4</u>	<u>532</u>
<u>5</u>	<u>622</u>
<u>6</u>	<u>711</u>

<u>7</u>	<u>801</u>
<u>8</u>	<u>891</u>
<u>9</u>	<u>980</u>
<u>10</u>	<u>1,070</u>
<u>11</u>	<u>1,160</u>
<u>12</u>	<u>1,249</u>
<u>13</u>	<u>1,339</u>
<u>14</u>	<u>1,429</u>
<u>15</u>	<u>1,518</u>
<u>16</u>	<u>1,608</u>
<u>17</u>	<u>1,698</u>
<u>18</u>	<u>1,787</u>
<u>19</u>	<u>1,877</u>
<u>20</u>	<u>1,967</u>

~~(5) The GMI limit for post employment services (PES) and post employment training and education (PETE) is 150% of federal poverty level and it varies depending on the number of people in the assistance unit. The GMI limit sets the level of GMI for each size assistance unit which cannot be exceeded if the assistance unit is to be eligible for PES payments or PETE payments.~~

~~(6)~~ (5) The adult's gross monthly earned income as defined in ARM 37.78.103 is compared to the applicable GMI limit. If the assistance unit's GMI exceeds the GMI limit, the assistance unit is ineligible for assistance. Monthly income is compared to the full limit even if the eligibility is being determined for only part of the month.

~~(a) Eligibility for PES payments and PETE payments is determined prospectively based on the department's best estimate of income and other circumstances which will exist in the application month.~~

~~(b)~~ When comparing income to the income limits, income anticipated to be received in the benefit month is used.

AUTH: 53-4-212, MCA

IMP: 53-4-211, 53-4-241, 53-4-601, MCA

37.78.807 TANF CASH ASSISTANCE EMPLOYMENT AND TRAINING ACTIVITIES (1) Participants in TANF cash assistance, regardless of whether they are members of a single-parent or two-parent family, may, in accordance with their WoRC employability plan, subject to availability in their community, participate in the following activities:

(a) through (d) remain the same.

(e) vocational educational training as defined at ARM 37.78.103. Vocational educational training is limited in a lifetime for each participant by ~~federal rule~~ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Section 407;

(f) remains the same.

(g) educational activities as defined at ARM 37.78.103;

(i) Educational activities are not limited ~~to~~ for individuals under the age of 20 who do not have a high school diploma or GED.

(ii) remains the same.

(2) In addition, a limited number of participants in TANF cash assistance households may participate in Parents as Scholars as defined in [Rule I]. The number of slots allowed, if any, may differ for single or two-parent households due to federal participation rate requirements for each and the penalties that would result from not meeting them.

AUTH: 53-4-212, MCA

IMP: 53-2-201, 53-4-211, 53-4-613, MCA

37.78.832 TANF CASH ASSISTANCE EMPLOYMENT AND TRAINING: SUPPORTIVE SERVICES (1) through (6) remain the same.

(7) Supportive service payments will not exceed ~~\$1,000~~ \$1,250 per household per state fiscal year.

(8) remains the same.

AUTH: 53-4-212, MCA

IMP: 53-2-201, 53-4-211, 53-4-601, 53-4-613, MCA

4. The Temporary Assistance for Needy Families (TANF) cash assistance program provides cash assistance to eligible low income Montanans. To qualify for the TANF Program, families must meet the eligibility requirements as set forth in ARM Title 37, chapter 78. The program is jointly funded by the state and federal governments and is administered by the state in accordance with federal and state law and regulations.

Rule I is proposed to be adopted in order to fulfill the mandate of House Bill 555. House Bill 555, Session Law Chapter No. 184, which created the Montana Parents as Scholars Program and requires the use of Temporary Assistance to Needy Families (TANF) or Maintenance of Effort (MOE) funds to fund a limited number of public assistance recipients who are in an approved educational program for the purpose of continuation of education leading toward a high school diploma, a general equivalency degree, an associate's degree, or a baccalaureate degree.

Pursuant to this proposed new rule, a TANF recipient approved to participate in Parents as Scholars Program would be required to complete an assessment evaluating his skills, education, job readiness, and barriers to employment. Before approving a TANF recipient for participation in the program, the recipient must have

satisfactorily completed 12 months of countable educational activities.

Code of Federal Regulations 261.21 and 261.23 mandate that states maintain a work participation rate of 50% for all family households and 90% for two-parent households. The hours recipients participate in Parents as Scholars education activities are not countable in determining if the state meets the participation rate requirements. The Parents as Scholars Program and the number of slots available in that program, if any, will therefore be limited in order to ensure the state complies with the work participation rate requirements set forth in the Code of Federal Regulations. The number of available slots, if any, may also differ for single and two-parent households in order to ensure state compliance with the work participation requirements.

The department will carefully monitor the impact of Parents as Scholars on the state participation rates to avoid the potential penalties of 1 to 5% of the federal TANF block grant, replacement of the penalty with state general fund dollars, and an increased Maintenance of Effort funding and adjust the number of slots as needed.

House Bill 555 required the use of TANF or Maintenance of Effort funds for a limited number of recipients in the Parents as Scholars Program. As previously discussed, the department must limit the number of openings available in the Parents as Scholars Program to ensure compliance with federal work participation rates as set forth in the Code of Federal Regulations. Based upon these limitations, the department estimates approximately 56 recipients might participate in the program without jeopardizing the participation rate. All initial openings will be filled on the basis of the eligibility criteria set forth in (1); thereafter, the department will maintain a waiting list of interested applicants and will fill any subsequent openings in the program by evaluation of applicants on the waiting list based upon the merit criteria set forth in (2).

It is estimated that 56 current TANF cash recipients could be allowed to participate in Parents as Scholars without jeopardizing the 50% all-family participation rate so the department would designate \$252,000 for the purpose of this program. This would continue to provide benefits for 56 qualified participants, based on an average benefit payment of \$375 per month. $\$375 \times 12 \times 56 = \$252,000$. Since the individuals are existing recipients who are currently receiving TANF cash assistance, the bill has no additional fiscal impact. The qualified participants will already be receiving case management services through the WoRC contracts and child care at a copay cost of \$10 per month per TANF household, so no additional case management or childcare costs will be incurred.

It is assumed that there will be no impact to the TANF or Child Care MOE since the same recipients who will be in the Parents as Scholars Program presently access the services.

ARM 37.78.102 currently adopts and incorporates by reference the TANF policy manual effective July 1, 2005. The department has made revisions to these manuals that took effect on January 1, 2006, and proposes amendments that will be

applied retroactively to July 1, 2006. Amendment of ARM 37.82.102 is therefore necessary in order to incorporate into the Administrative Rules of Montana the revised versions of the policy manuals, to permit all interested parties to comment on the department's policies and to offer suggested changes. It is estimated that changes to the TANF Manual could affect 10,247 TANF recipients. Manuals and draft manual material are available for review in each local Office of Public Assistance and on the department's website at www.dphhs.mt.gov. Following is a brief overview of the changes being made to each manual section for the TANF manual.

TANF 001 Monthly Income Standards. To comply with the language included in House Bill 2, Session Law Chapter No. 606, a new standard must be used for determining benefit payment levels for households that are income eligible for TANF cash assistance. Currently TANF uses a measure of 30% of Fiscal Year ("FY") 2002 Federal Poverty Level Index as a basis for three sets of TANF Cash Assistance income eligibility standards:

- (a) Gross Monthly Income Standard ("GMI Standard");
- (b) Benefit Standard; and
- (c) Net Income Standard.

The GMI Standard and the Benefit Standard set requirements for income eligibility for households filing for assistance. Each month TEAMS tests the income of each household against the GMI Standard and against the Benefit Standard. The Net Income Standard is used to deem income to a TANF household for a person who is not otherwise included in the household is nevertheless "deemed" to be so; such a "deemed" person is allowed to disregard part of his earned income including the NMI amount for their deemed household size.

Previously, TEAMS was programmed to round net income up before testing against the Benefit Standard. Effective with the benefit month of October 2005, the process is changed to round net income down prior to testing against the Benefit Standard.

If, after allowable disregards, the net income of a household is less than the Benefit Standard and the household passes the GMI and Benefit Standards using the 30% FY 2002 Federal Poverty Level Index for income eligibility, then the monthly cash assistance benefit level for the household must be determined.

To implement changes outlined in House Bill 2, a fourth standard, i.e., "TANF Payment Standard" had to be added for calculating the cash assistance benefit level of an income eligible household. The "TANF Payment Standard" is 33% of Fiscal Year 2005 Federal Poverty Level Index for the appropriate household size. The monthly cash assistance benefit level of an income eligible household is determined by subtracting the household's net countable income from the TANF Payment Standard. This impacts 5070 cases per month at a cost of \$3,814,308 per year to TANF.

TANF 306-3 Child Support Payments and Collections. TANF 306-3 is being changed in order to comply with language in House Bill 529, Session Law Chapter No. 558, that requires child support supplement payments to be included as a type of income available to TANF families. House Bill 259 requires a child support supplement payment using TANF block grant funds be issued to TANF families, with the amount of the payment being based on current child support collected from a noncustodial parent. This payment will be an amount equal to the amount of current child support collected up to but not exceeding \$100.00 per month per TANF households. This impacts 814 cases per month at a cost of \$749,002 per year to TANF.

TANF 500 Income Overview. TANF 500 is being changed to require each household member to apply for all available benefits and to access all available countable income he might be eligible for or entitled to receive. Each household member must apply for such benefits and access such income even if he would prefer to wait and apply to access at a later time. The amount of such income, if it can be determined, is deemed countable to the household. If the amount of such benefits or income the individual would receive if he applied for or accessed it cannot be determined, the case is to be closed or the application is to be denied under the proposed amendment on the grounds that there is not sufficient information to determine financial eligibility. By requiring the use of alternate sources of income, the TANF expenditures may be reduced.

TANF 501-1 Unearned Income. This manual section is being changed to comply with language in House Bill 529, Session Law Chapter No. 558, that requires child support supplement payments to be included as a type of income available to TANF families. House Bill 259 provides that a child support supplement payment using TANF block grant funds will be issued to TANF families, with the amount of the payment being based on current child support collected from a noncustodial parent. This payment will be an amount equal to the amount of current child support collected up to but not exceeding \$100.00 per month per TANF households. This impacts 814 cases per month at a cost of \$749,002 per year to TANF.

This manual section is also being revised to exclude interest income on a countable resource and to count interest income on an excluded resource, thereby providing consistent policy between the Family Medicaid Manual and the TANF Manual. The fiscal impact of this change would be negligible since the amount of interest income involved is minimal.

TANF 701-3 Participation Components. This manual section was updated to add Parents as Scholars participation as a possible participation activity for a limited number of TANF recipients.

TANF 701-3(a) Parents as Scholars - New to Manual. This manual section is being added to comply with House Bill 555, Session Law Chapter No. 184, which allows a limited number of TANF recipients to attend an approved educational program leading to an associate or baccalaureate degree. The proposed manual section

requires the recipient to meet the requirements established for PAS eligibility. In order to meet the federally mandated participation rates, participation slots in the Parents as Scholars Program will be limited and monitored.

TANF 704-1 Supportive Services. This manual section is being changed to incorporate new financial guidelines for issuing supportive services for participants' efforts to participate fully in Family Investment Agreement/WoRC Employability Plan ("FIA/EP") activities and to obtain and maintain employment. These new guidelines are required due to increases in the cost of these supportive activities. Pursuant to the new guidelines, each case would be limited to payment of no more than \$1,250 for supportive services in each state fiscal year, reflecting an increase in participation related expenses to \$600 per case per state fiscal year, and in employment related expenses of \$650 per case per state fiscal year.

TANF 704-3 Child Support Supplemental Payments. This manual section is being changed in order to comply with language in House Bill 529, Session Law Chapter No. 558, that requires child support supplement payments to be included as a type of income available to TANF families. House Bill 259 provides that a child support supplement payment using TANF block grant funds will be issued to TANF families, with the amount of the payment being based on current child support collected from a noncustodial parent. This payment will be an amount equal to the amount of current child support collected up to but not exceeding \$100.00 per month per TANF households. This impacts 814 cases per month at a cost of \$749,002 per year to TANF.

ARM 37.78.416 TANF Cash Assistance; Excluded Unearned Income. It is proposed that (2)(z) be added to reflect interest earned on countable resources is excluded unearned income. This change will provide for consistent policy between Family Medicaid and TANF. The fiscal impact of this change will be negligible since the amount of interest income involved is minimal.

ARM 37.78.420 TANF Assistance Standards; Tables; Methods of Computing Amount of Monthly Benefit Payment. It is proposed that (1)(d) be added to reflect the use of a new standard in determining the monthly cash assistance payment amounts in the TANF cash assistance program. This new standard, titled the TANF Payment Standard, was developed in order to comply with the language included in House Bill 2, Session Law Chapter No. 606. This TANF Payment Standard is based on the size of the household assistance unit. The net countable income will be subtracted from the TANF Payment Standard to determine the amount of the payment for the TANF cash assistance unit. This amount will continue to be prorated for the month of application if eligibility is for less than a full month.

It is proposed that (4)(d) be added to reflect the comparison of the assistance unit's net countable income as defined in ARM 37.78.103 to the TANF Payment Standard to determine the amount of the payment. It is also proposed that a table listing the Payment Standard based on 33% of the FY 2005 Federal Poverty Level be added to this section.

It is proposed that (5) be deleted as the PES and PETE payments have been discontinued.

It is proposed that (6) become (5).

It is proposed that (6)(a) be deleted as the PES and PETE payments have been discontinued.

It is proposed that (6)(b) become (6)(a).

ARM 37.78.807 TANF Cash Assistance Employment and Training Activities. It is proposed that (1)(g)(i) be updated to correct an error regarding education and training for those under the age of 20 who have not graduated from high school or attained a GED. The proposed update makes it clear that educational activities are not limited for those under the age of 20 years who have not received a high school diploma or a GED.

It is proposed that section (2) pertaining to the Parents as Scholars Program be added as an activity option for a limited number of TANF recipients as mandated by House Bill 555.

ARM 37.78.832 TANF Cash Assistance Employment and Training: Supportive Services. It is proposed that (7) be amended to reflect the increased cost of supporting participants' efforts to participate fully in TANF Family Investment Agreement/WoRC Employability Plan (FIA/EP) activities and to obtain and maintain employment. Pursuant to the proposed amendment, the maximum annual allowable amount per household in each state fiscal year would be increased from \$1,000 to \$1,250. This increase is primarily due to higher transportation costs and also reflects the increased costs of employment-related tools and clothing. Supportive services assist participants in finding and stabilizing new employment and are an integral part of the service package that moves participants from cash assistance to employment. Supportive services will continue to be granted according to household need, consideration of all rules governing supportive services to TANF households, and available designated supportive service dollars. 3,869 TANF households are eligible for supportive services based on need, rules governing supportive services, and available designated dollars. \$250,000 from TANF federal funds has been added to the supportive services allocation.

5. The department intends that the manual sections of the Montana TANF Cash Assistance Manual incorporated by reference in ARM 37.78.102 be adopted as follows:

TANF 001 Monthly Income Standards will be applied retroactively to October 1, 2005.

TANF 306-3 Child Support Payments and Collections will be applied retroactively to January 1, 2006.

MAR Notice No. 37-387

TANF 500 Income Overview will be applied retroactively to July 1, 2006.

TANF 501-1 Unearned Income will be applied retroactively to January 1, 2006.

TANF 701-3 Participation Components - New to Manual will be applied retroactively to July 1, 2006.

TANF 701-3(a) Parents as Scholars will be applied retroactively to July 1, 2006.

TANF 704-1 Supportive Services will be applied retroactively to July 1, 2006.

TANF 704-3 Child Support Supplemental Payments will be applied retroactively to July 1, 2006.

All other portions of the manual which have not been changed will be applied retroactively to July 1, 2006. No detrimental effects are anticipated as a result of these applicability dates. The adoption of Rule I and all other rule amendments are intended to be applied retroactively to July 1, 2006.

6. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on August 3, 2006. Data, views, or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

7. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

/s/ Dawn Sliva
Rule Reviewer

/s/ Russell Cater for
Director, Public Health and
Human Services

Certified to the Secretary of State June 26, 2006.